

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 406 of 2001

CC.5/2000 of COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR

APPELLANT/ACCUSED:

**P.K.THANKAPPAN, FORMER VILLAGE
ASSISTANT, KUDAYATHOOR VILLAGE
OFFICE, KUDAYATHOOR.**

**BY ADV. SRI.B.RAMAN PILLAI
SRI.M.T.SURESHKUMAR**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PP SRI.THOMAS JOHN AMBOOKAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.P. Balachandran, J.

Crl.A.No.406 of 2001

JUDGMENT

The accused in C.C.No.5/00 on the file of the Court of the Enquiry Commissioner & Special Judge, Thrissur convicted for offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') read with Section 13(2) thereof is the appellant. He was sentenced by the Special Judge to undergo rigorous imprisonment for a term of three years and to pay a fine of Rupees twenty five thousand and in default to undergo simple imprisonment for one year for offence under Section 7 of the Act and to undergo rigorous imprisonment for a term of four years for offence under Section 13(1)(d) of the Act read with Section 13(2) thereof, with benefit of concurrency for the substantive sentences of imprisonment and right of set off.

2. The case of the prosecution is that the appellant, a Public Officer, while working as Village Assistant in Kudayathoor Village Office, abusing his position as such public servant, demanded from PW2, K.R.Thankappan, at 11 a.m. on 21.11.1997 at the Village Office, Kudayathoor and received from him, in pursuance thereof, illegal gratification of Rupees five hundred and one bottle of Brandy at 1.40 p.m. on 24.11.1997 at the Village Office as a motive or reward for doing an official act he is to perform as such Village Assistant to wit - for furnishing details regarding the period and nature of possession of the property owned by his great grandfather and has thereby committed an offence punishable under Section 7 of the Act and has also committed criminal misconduct punishable under Section 13(1)(d) of the Act read with Section 13(2) thereof, obtaining for himself pecuniary advantage and valuable liquor by corrupt and illegal means.

3. PW2 gave Exhibit P2 F.I. statement before PW9, the Dy.S.P., Vigilance and Anti Corruption Bureau, Thodupuzha in the matter and on the basis thereof he arranged trap being conducted procuring PWs 3 and 4 as trap witnesses. The trap was successful and the appellant was caught red handed and arrested at the spot and the routine tests were conducted to establish the authenticity of the acceptance by the appellant of the trap money and Brandi. On completion of the investigation, after obtaining Exhibit P1 sanction order, final report was laid, charge-sheeting the appellant for offences as already stated.

4. On the side of the prosecution PWs 1 to 9 were examined, Exhibits P1 to P11 were got marked and MOs 1 to 17 were got identified. On the prosecution closing their evidence, the appellant was questioned by the Special Judge under Section 313 Cr.P.C. Thereupon, he generally denied all incriminating circumstances appearing in evidence

against him and maintained that he is innocent. The appellant also submitted a written statement of defence. Though the case was posted for defence evidence, the accused did not adduce any evidence in defence.

5. PWs 3 and 4 are the trap witnesses, whose services were procured by PW9 and PW2 is the defacto complainant. In the presence of the trap witnesses, PW9 received from PW2, MO1 decoy note of denomination of Rupees five hundred; MO2 bill for purchase of Brandi and MO3 bottle of Brandi wrapped in MO4 newspaper sheet, preparing Exhibit P3 mahazar in that behalf. Thereafter, PW2 was entrusted with MOs 1 to 4 and sent to the Village Office to meet the appellant and to deliver him MO1 cash and MO3 Brandi in case demand is repeated by the appellant. PW2 went over to the Village Office and pursuant to the demand made by the appellant, he handed over MO3 bottle of Brandi and MO2 bill thereof as also MO1 currency note. Consequent on

the signal given by PW2, on receipt of the trap money and Brandi by the appellant, the trap team approached the appellant, conducted necessary tests and effected recovery of MOs 1 to 4 under Exhibit P4 recovery mahazar. PW2 has deposed the details of circumstances, under which, the appellant happened to advance demand from him for illegal gratification, of cash worth Rupees five hundred and Brandi purchased from the Beverages Corporation. He has identified MO1 currency note worth Rupees five hundred, MO2 bill obtained by him from the Beverages Corporation, Thodupuzha for purchase of MO3 bottle of Brandi and MO4 newspaper sheet, in which, MO3 bottle of Brandi was wrapped.

6. PW2 has deposed that he accompanied the trap team; that the trap team dropped him a bit away from the Village Office; that he proceeded to the Village Office with MO2 bill, MO3 bottle of Brandi and MO1 trap money; that he met the appellant, who asked him to wait, as then there were four or five

others also there and the appellant was engaged in work; that he sat on a bench and waited there for about one hour and when others, who were present there, left the Village Office, the appellant told him that it is time to take meals and that he will attend to his requirements thereafter.

7. PW2 thereupon told the appellant that he has brought the cash and the Brandi and thereupon the appellant demanded for its delivery; PW2 delivered the bottle of Brandi to the appellant, who went to the store room of the office with the said bottle of Brandi; opened the bottle and poured a portion of the Brandi into a glass; that thereupon he showed MO2 bill and the appellant was convinced about the genuineness of the Brandi, having been purchased from the Beverages Corporation and he consumed the same and also offered some to PW2, which he refused. The appellant was preparing to take his meals. PW2 deposed that he then told the appellant that he has

brought the cash also and then the appellant asked for the cash being delivered to him and the cash, which he delivered, was received by the appellant with his left hand and kept it in his loin and took his seat to have his meals. Thereupon, PW2 gave signal and then the trap team, headed by PW9, came over; introduced the members of the team and then proceeded to effect seizure.

8. The questions put to PW2 in cross-examination on behalf of the appellant, disputing the receipt of MO1 currency note, are as to whether PW2 was not attempting to place forcibly MO1 currency note into the left hand of the appellant rolling it like a beedi and whether he was not placing it within the loin of the appellant, as the appellant did not receive it, PW2 has denied the suggestions. The questions so put to PW2 establish the correctness of the recovery of MO1 from the loin of the appellant. The seizure of MO1 as also of MO3 bottle of Brandi, from which, a portion had

been consumed, is not at all challenged in cross-examination. There is also no case for the appellant that PW2 had nothing to be obtained from the Village Office as stated by him in his deposition.

9. PW3, the trap witness, has deposed that on PW9, the Dy.S.P., asking the appellant as to the whereabouts of the trap money received by him, he stated that it is within his loin. PW4 is another trap witness. On the basis of the statements of PWs 3 and 4 that they have not actually seen MOs 1 to 4 being received by the appellant from PW2, it is contended by the counsel for the appellant that there is no evidence in the case that the appellant received MO1 trap money and MO3 bottle of Brandi from PW2. This contention is devoid of merit for the reason that there is no dispute that what was recovered from the loin of the appellant is MO1 currency note of denomination of Rupees five hundred bearing No.IBK 521845, which PW2

surrendered before PW9, as trap money. Further, MO3 bottle of Brandi and MO2 receipt for purchase thereof from the Beverages Corporation, Thodupuzha, wrapped in MO4 newspaper sheet, with part of the Brandi contained in MO3 bottle already consumed, recovered from the store room of the Village Office, where the appellant was preparing to take his meals, were the material objects entrusted by PW9 with PW2, after obtaining them from PW2 under Exhibit P3 entrustment mahazar. The appellant has no convincing explanation as to how MO1 currency note, surrendered to PW9 by PW2, under Exhibit P3 mahazar and sent through PW2 by PW9, to be delivered to the appellant, if demanded, happened to be within the loin of the appellant. Further, the appellant has no explanation as to how MO3 full bottle of Mc Dowel Brandi along with MO2 bill sent by PW9 through PW2, after receiving it from PW2 under Exhibit P3 entrustment mahazar, happened to be on the table within the store room in the

Village Office, where the appellant was preparing to take his meals and how a portion of the quantity of the Brandi in the said bottle had been found consumed. There is no case for the appellant that PW2 consumed Brandi within the Village Office keeping it on the table in the store room of the Village Office, where the appellant himself was preparing to take his meals. In the aforesaid circumstances, it is immaterial that PWs 3 and 4 have not witnessed actually delivery of MOs 1 to 4 by PW2 to the appellant.

10. PW5 is the L.D.Clerk in the office of the Beverages Corporation at Thodupuzha, who has proved MO3 bottle of Brandi, as having been sold under MO2 bill from the Thodupuzha shop of the Beverages Corporation. Exhibit P5 is the bill book and Exhibit P5(a) therein is the carbon copy of MO2 bill. PW6 is the Village Officer of Kudayathoor Village. He has proved Exhibit P6 plan of the scene of occurrence. He has also deposed of his

having witnessed seizure of M01 currency note from the loin of the appellant and recovery of M02 from the table within the Village Office and the Investigating Officer conducting tests in caustic soda liquid. He has also deposed of seizure of Exhibit P7 slip under Exhibit P8 mahazar and has given evidence that Exhibit P7 is the details of documents, prepared in the handwriting of two village men of that office as also in the handwriting of the appellant. He is also attestor to Exhibit P8 mahazar.

11. PW7 is Grade II Surveyor in the Office of the Re-survey Superintendent at Thodupuzha, who was, at the relevant time, working in Kudayathoor Village Office. She has deposed that the appellant took the person, who was sitting on the bench, along with him to the store room; recovery of M01 currency note from the loin of the appellant and recovery of M03 bottle of Brandi from the table in the store room along with M04 newspaper sheet,

within which, it had been wrapped. PW8 is the C.I. of Police, Vigilance and Anti Corruption Bureau, Thodupuza. He has deposed that he has recovered Exhibit P7 paper slip under Exhibit P8 mahazar and Exhibit P5 under Exhibit P9 mahazar.

12. PW9 is the Dy.S.P., who has laid the trap and conducted investigation in the case. When questioned under Section 313 Cr.P.C. as regards witnessing the seizure of MO1 from the loin of the appellant by PWs 6 and 7, the appellant has answered that those witnesses were present and has not denied of their having witnessed the said seizure. Further when asked about his handwriting in Exhibit P7 slip, he has stated that it contains his handwriting as well. He has also stated, when questioned, that PW2 attempted to thrust MO1 currency note into his hand and as he warded off that attempt, PW2 kept the currency note within his loin (within the loin of the appellant). In the written statement of defence filed by the

appellant, he admitted of PW2 having brought MO3 bottle of Brandi, but according to him, village men Rajan Pillai and Narayana Pillai were inviting him to the store room, where the Brandi had been poured in two glasses and Narayana Pillai offered one glass to him and to PW2, but that he did not consume the liquor. The details stated by him in the written statement of defence does not appear to be true, as those are not thinks which would happen in a Government Officer without the connivance of the officers, who are in control of the office at the relevant time. Evidence of PW6, the Village Officer, shows that he was not present and he came over to the office only when the trap proceedings were in progress. Hence, the appellant was the next in control of the affairs in the Village Office. Thus, on an over all appreciation of the entire evidence adduced in the case, the Special Judge has rightly arrived at the conclusion that the prosecution has been able to establish the demand

and acceptance of M01 currency note by way of illegal gratification by the appellant and further that the appellant has obtained for himself by illegal means the valuable M03 bottle of Brandi purchased by PW2 under M02 bill from the Beverages Corporation, Thodupuzha. The finding so arrived at by the Special Judge is on sound appreciation and a proper discussion of the evidence adduced in the case. I concur with the finding so entered into by the Special Judge and find the appellant guilty of offences punishable under Sections 7 and 13(1)(d) of the Act read with Section 13(2) thereof. The conviction of the appellant for the said offences is, thus, upheld.

13. It is urged by the counsel for the appellant that the sentence awarded by the Special Judge is highly excessive and disproportionate to the gravity of the offence committed by the appellant, who is holding a lower post of Village Assistant in the Revenue Department and further

that the appellant is now aged 62 years and has faced trial in the case for one year and has undergone the trauma of being under the shade of conviction and has also lost his job and therefore, some leniency may be shown in the matter of sentence and the sentence be reduced to the minimum possible. The Special Judge has sentenced the appellant to rigorous imprisonment for three years and to pay a fine of Rupees twenty five thousand and in default to undergo simple imprisonment for one year for offence under Section 7 of the Act and further to undergo rigorous imprisonment for four years for offence under Section 13(1)(d) of the Act read with Section 13(2) thereof. Though benefit of concurrency was also granted, I am of the view that the sentence awarded to the appellant is a bit excessive and some leniency can be shown in the matter of sentence awarded to the appellant.

14. In the result, while confirming the conviction of the appellant for offences under

Sections 7 and 13(1)(d) of the Act read with Section 13(2) thereof, I modify and reduce the sentence of rigorous imprisonment awarded to the appellant to two years each for both the offences as already stated with benefit of concurrency. The fine imposed under Section 7 of the Act is also reduced from Rupees twenty five thousand to Rupees ten thousand, with, however, no change in the default sentence.

This criminal appeal is disposed of as above.

31st January, 2007

(K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Cr1.A.No.406 of 2001

JUDGMENT

31st January, 2007